

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FREDERICK EUGENE LEONARD,  
Plaintiff,  
v.  
O'CONNER, et al.,  
Defendants.

No. 2:21-cv-1886-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint (ECF No. 1), plaintiff has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 (ECF No. 2).

Leave to Proceed In Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion

1 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which  
2 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
3 relief.” *Id.* § 1915A(b).

4 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)  
5 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and  
6 plain statement of the claim showing that the pleader is entitled to relief, in order to give the  
7 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*  
8 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).  
9 While the complaint must comply with the “short and plain statement” requirements of Rule 8,  
10 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556  
11 U.S. 662, 679 (2009).

12 To avoid dismissal for failure to state a claim a complaint must contain more than “naked  
13 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
14 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of  
15 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at  
16 678.

17 Furthermore, a claim upon which the court can grant relief must have facial plausibility.  
18 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual  
19 content that allows the court to draw the reasonable inference that the defendant is liable for the  
20 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a  
21 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*  
22 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the  
23 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

#### 24 Screening Order

25 Plaintiff’s complaint (ECF No. 1) asserts two claims of due process. As discussed below,  
26 neither claim can survive screening.

27 In the first claim, plaintiff alleges he was denied due process in a disciplinary proceeding.  
28 *Id.* at 3. He claims he was found guilty and lost 60 days of credit. *Id.* Plaintiff’s claim, if

1 successful, would necessarily undermine the duration of his current confinement, as he is serving  
 2 a determinate sentence of seven years. *See Leonard v. Neushmid*, No. 2:19-cv-1982-KJM-EFB  
 3 (E.D. Cal.).<sup>1</sup> Under *Heck v. Humphrey*, 512 U.S. 477, (1994), if success in a section 1983 action  
 4 would implicitly question the validity of confinement or its duration, the plaintiff must first show  
 5 that the underlying conviction was reversed on direct appeal, expunged by executive order,  
 6 declared invalid by a state tribunal, or questioned by the grant of a writ of habeas corpus.  
 7 *Muhammad v. Close*, 540 U.S. 749, 751 (2004). The complaint does not state that such relief has  
 8 been granted. As a result, this claim is barred by *Heck*.

9 In the second claim, plaintiff alleges that an administrative appeal has not been processed  
 10 properly. ECF No. 1 at 4. Any failure to properly process or respond to an administrative appeal,  
 11 however, does not violate due process, as there are no constitutional requirements regarding how  
 12 a grievance system is operated. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003);  
 13 *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993).

14 Based on the foregoing, the court will dismiss plaintiff's complaint with leave to amend.

#### 15 Leave to Amend

16 Plaintiff may choose to amend his complaint. He is cautioned that any amended  
 17 complaint must identify as a defendant only persons who personally participated in a substantial  
 18 way in depriving him of his constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir.  
 19 1978) (a person subjects another to the deprivation of a constitutional right if he does an act,  
 20 participates in another's act or omits to perform an act he is legally required to do that causes the  
 21 alleged deprivation). Plaintiff may also include any allegations based on state law that are so  
 22 closely related to his federal allegations that "they form the same case or controversy." *See* 28  
 23 U.S.C. § 1367(a).

24 The amended complaint must also contain a caption including the names of all defendants.  
 25 Fed. R. Civ. P. 10(a).

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27 <sup>1</sup> A court may take judicial notice of court records. *See MGIC Indem. Co. v. Weisman*,  
 28 803 F.2d 500, 505 (9th Cir. 1986); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

1 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See*  
 2 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Nor may he bring unrelated claims against  
 3 multiple defendants. *Id.*

4 Any amended complaint must be written or typed so that it so that it is complete in itself  
 5 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
 6 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
 7 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
 8 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter  
 9 being treated thereafter as non-existent.”) (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
 10 1967)).

11 Any amended complaint should be as concise as possible in fulfilling the above  
 12 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual  
 13 background which has no bearing on his legal claims. He should also take pains to ensure that his  
 14 amended complaint is as legible as possible. This refers not only to penmanship, but also spacing  
 15 and organization. Plaintiff should carefully consider whether each of the defendants he names  
 16 actually had involvement in the constitutional violations he alleges. A “scattershot” approach in  
 17 which plaintiff names dozens of defendants will not be looked upon favorably by the court.

#### 18 Conclusion

19 Accordingly, it is ORDERED that:

- 20 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) is GRANTED;
- 21 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected  
 22 in accordance with the notice to the California Department of Corrections and Rehabilitation filed  
 23 concurrently herewith;
- 24 3. Plaintiff’s complaint (ECF No. 1) is dismissed with leave to amend within 30 days  
 25 from the date of service of this order; and

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4. Failure to comply with this order may result in dismissal of this action.

DATED: November 9, 2021.



EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE